

1 CLOSED SESSION

2 BY MR. SCHMIDT:

3 Q Mr. Egan, do you have any
4 understanding that Golf and Versus are [REDACTED]
5 [REDACTED] expensive as Tennis Channel?

6 A "Expensive" meaning?

7 Q On a first subscriber basis?

8 A The license fee?

9 Q Yes, that's exactly right. Thank
10 you.

11 A Okay. So the -- the raw rates,
12 you know before discounts, a I understand them
13 seem to be for -- actually after discount. I
14 think -- I think your statement is correct.

15 So, I think that the Tennis
16 Channel's rate is somewhere in the [REDACTED] cent
17 range and the other two services are in the
18 high [REDACTED].

19 Q Okay. They're actually up to [REDACTED]
20 now, did you know that?

21 A Okay. I'll -- I'll agree with
22 you. I won't disagree.

1 Q I have SNL Kagan data that I was
2 going to show you, but you don't have any
3 disagreement with that, do you?

4 A Right.

5 Q Did you make any kind of
6 adjustment in your calculations to account for
7 the price differential between Tennis Channel
8 on the one hand and Golf and Versus on the
9 other hand?

10 A It wasn't part of my assignment.
11 I don't know how impacts the programming
12 analysis, the price of it, I mean --

13 Q Okay.

14 A -- following it.

15 Q By the way, did you see anyplace
16 where Comcast did that; where they looked at
17 the relevant prices of Versus or Golf Channel
18 relative to other competitive networks?

19 A I don't know what they did. In
20 fact, and this, as I understand will be here
21 shortly, you can ask them. I didn't see any
22 evidence that they looked at the per

1 subscriber difference between Versus, Golf and
2 Tennis. And frankly, nor would I expect them
3 to.

4 Q Okay. And my question was a
5 little broader. Did you see any consideration
6 by Comcast of the price of Versus, or Golf and
7 their carriage decisions?

8 A I didn't, as I would expect and as
9 my report points out, I would expect the
10 distributor to bring Versus and Golf into the
11 equation when considering Tennis Channel. So
12 therefore I didn't expect to see that
13 evidence, and I didn't see it.

14 Q Let me try it again because I
15 think you're answering a different question.

16 A Okay. I'm sorry if I
17 misunderstood.

18 Q No, that's okay.

19 The question I'm trying to answer
20 is just focusing on -- forget Tennis Channel.
21 Just focusing on the decisions they made about
22 Golf and Versus --

1 A Oh, yes.

2 Q -- did you see any consideration
3 of cost on how are these networks priced
4 relative to what we could be spending our
5 money on?

6 A You know, it wasn't my assignment
7 to investigate Comcast carriage of Golf and
8 Versus, so --

9 Q Let's look at what you looked at
10 in terms of your analysis. Is it accurate to
11 say that the most significant programming
12 element on most sports networks is their live
13 event programming?

14 A You know, I'm going to -- I
15 paused, because there are so many sports
16 networks now that I want to make sure that I
17 really think about that.

18 I would say that for the most part
19 that is generally true. We're going to have
20 some exceptions to that. Outdoor Channel, if
21 you're familiar with that, you know it's
22 really not an event channel. It seems to be

1 very popular. The Sportsmen Channel.

2 So, again, we get back to that --
3 that vagueness of the term "sports channels."

4 Q Is that statement applicable to
5 Golf, to the Golf Channel?

6 A Which -- which statement?

7 Q The statement that the most
8 significant programming element is their live
9 event programming?

10 A The most significant?

11 Q Yes.

12 A I think that is their -- is their
13 event programming, yes, correct.

14 Q The live event programming?

15 A You know, I think it's the most
16 significant. Yes, I -- I would say that's
17 probably generally true.

18 Q Same for Tennis Channel?

19 A Probably true.

20 Q Same for Golf? I'm sorry, same
21 for Versus?

22 A Versus is a tougher one. As I've

1 said, because it's not a single sport network.
2 So there are so many different reasons one
3 might watch Versus. And so to do an analysis
4 of, you know what's more important there, it's
5 -- it's a tough one. I -- I didn't undertake
6 that.

7 Q That's not something you looked
8 at?

9 A The question of on Versus is the
10 most significant programming --

11 Q Yes.

12 A -- element there live sports? No.

13 Q Okay. What's the most popular
14 programming on Versus, as far as you know, or
15 the most valuable programming on Versus?

16 A I don't really know. I didn't --
17 I didn't -- again, I didn't go out and do a
18 survey of their customers or anybody's
19 customers to ask them what is -- what do you
20 value most. And as I've said to you earlier,
21 the hooks and bolts category is extremely
22 popular. So, who knows.

1 But I would think that the NHL
2 because of its public profile and what I've
3 seen of ratings and the amount of games that
4 they carry and it being a major league is
5 probably, you know their most valuable event,
6 franchise that they have.

7 Q Would you say Tour de France is
8 their second?

9 A I'm going to have a hard time with
10 it. I'm sorry. But Tour de France certainly
11 be a candidate I would look at. But, again,
12 you know I would be looking at some of the
13 other things. College football is incredibly
14 popular. So, it's hard for me to say after.

15 Tour de France clearly is a
16 contender.

17 Q Okay. Got it.

18 You agree with me that generally
19 speaking event programming is more valuable to
20 advertisers?

21 A Then?

22 Q Then non-event programming?

1 A I think generally that's true.

2 Q Now your data, as I understand it,
3 shows the Tennis Channel has more event
4 programming and less non-event programming
5 than either Versus or Golf, correct?

6 A Correct.

7 Q For example, if we look at your
8 report page 20 -- I'm sorry. I keep saying
9 report. I mean your testimony.

10 A I got it.

11 Q I hope you follow me on that.

12 If we look at your testimony
13 Exhibit 77 on page 20 you have a table. And
14 as I understand the table it compares Tennis
15 Channel and Golf in the 15 week sample that
16 you did. And what you found was on an hour's
17 basis -- I'm sorry, this is a ten week sample.
18 In this ten week sample on an hour's basis it
19 terms of non-event programming Golf has about
20 three times the amount of non-event
21 programming as Tennis Channel, correct?

22 A Okay. Let's -- let's -- let's

1 step back for a minute and clarify.

2 What you're speaking of is hours.

3 Q Yes.

4 A The hours dedicated to it.

5 Q Yes.

6 A Not so the number of events?

7 Q Yes, that's exactly what I --

8 A The number of different
9 tournaments.

10 And we're also not distinguishing
11 repeats from original airs, right? So we're
12 just lumping all of this stuff together --

13 Q Yes.

14 A -- into one grab bag. And, yes,
15 Tennis Channel devotes less than [REDACTED] percent of
16 its time to non-event and Golf Channel a
17 little more than [REDACTED] percent of its time to
18 that.

19 Q Almost [REDACTED]?

20 A Almost [REDACTED].

21 Q Okay. And then if we look at page
22 29, that's the other side of the equation.

1 That's the event programming, correct?

2 A The table there?

3 Q Yes, sir. Yes.

4 A Yes.

5 Q Again comparing Tennis Channel and
6 Golf Channel in the -- I believe this is in
7 the sample that you looked at, is that right?

8 A Correct.

9 Q Okay. So the 15 weeks. And during
10 this 15 weeks you have different categories.
11 Was it run within 7 days of the event, more
12 than 8 days but less than 60, more than 60
13 days. And in each category of those events
14 Tennis Channel has more hours of event
15 programming than Golf, correct?

16 A Because Tennis Channel runs so
17 much -- so many repeats, as I said earlier.

18 Q I'll come back to that.

19 A [REDACTED] percent of its hours are
20 repeats. Your statement is correct.

21 Q Okay. Even as to the seven days
22 or less category, it has more hours of those

1 events than Golf Channel does?

2 A Again, with the caveat that it's--
3 it's inflated by the repeats, correct.

4 Q Looking at these two numbers, a
5 [REDACTED] hours versus [REDACTED] hours, do you view that
6 as a meaningful difference just on the face of
7 those numbers? A couple of hundred hours?

8 A You know, I can't say. It's --
9 it's a difference. But -- but it has to be
10 judged by what those hours consist of. And so
11 what is the sport, you know what is the
12 popularity of it, is it original, is it
13 repeat, so and so forth. Is it live same day
14 or not? Okay.

15 So by itself, I would say it's a
16 factor.

17 Q Yes.

18 A And then you have to take the
19 other factors into account and then you can
20 make a decision on its significance.

21 Q And let's look at the other
22 factors. Page 50 that's where you took out the

1 repeats, right?

2 A Page 50?

3 Q I'm sorry. Paragraph 50, page 30.

4 A I'm sorry.

5 Q That's where you took out the

6 repeats?

7 A So what I did here --

8 Q Correct?

9 A -- and -- and I want --

10 Q Sir?

11 A -- to clarify that the box that
12 now says "First run same day delay," is
13 actually live or first run same day delay. I
14 apologize for my error there. But it is live
15 programming and first run same day delay
16 programming on each of the channels.

17 And then the next box over is the
18 repeat programming.

19 So the one box is original
20 programming. Hour, these are all hours. And
21 then the next box is repeat hours.

22 Q Do you have what my question was?

1 A No, I'm sorry. I went on so long
2 I forgot it.

3 Q Let me go back to my question,
4 which was this shows -- well, let me ask a
5 different question.

6 This shows the hours for live or
7 first run same delay in your 15 week sample of
8 Tennis Channel versus Golf Channel. And it
9 shows Golf has about [REDACTED] more hours, correct?

10 A That's correct. Yes.

11 Q Okay. But when you look at the
12 whole year, which is what appears on page 31,
13 they're pretty close to each other in terms of
14 the live events, right?

15 A In terms of live? Yes, they are.
16 In terms of live first run same day they're
17 not.

18 Q Okay. And "live" by definition
19 cannot be a repeat, correct?

20 A I don't know if that's a trick
21 question. I think not.

22 Q It's not intended to be. It may

1 be --

2 A In another dimension maybe, I
3 don't know.

4 Q -- but it was unintentional. All
5 right.

6 We went through that pretty
7 quickly, which is good.

8 Let's back to non-event
9 programming. You haven't looked at the rating
10 of any of Golf Channel's non-event
11 programming, have you?

12 A I have not.

13 Q Same for Versus non-event
14 programming?

15 A Have not.

16 Q You couldn't give me a sense of
17 how many viewers watch any of those shows,
18 could you?

19 A No.

20 Q Do you have any doubt, though,
21 that if Golf took away its live programming,
22 it wouldn't be able to get anywhere near the

1 rates from MVPDs that it does?

2 A If Golf Channel took away its live
3 programming, could it get the same license
4 fees?

5 Q Yes.

6 A I doubt it.

7 Q It would be a fraction, wouldn't
8 it?

9 A I don't know what it would be, but
10 I doubt that it would be the same number. You
11 know, it certainly does depend on what they
12 replace it with more than anything.

13 Q IF they just filled out the non-
14 event programming, you wouldn't expect them to
15 get anywhere near the license fees they
16 otherwise get, right?

17 A I wouldn't expect them to get the
18 same license fee, correct.

19 Q Same for Versus, right?

20 A Correct.

21 Q Do you know that they'd be viable
22 channels if they just had the non-event

1 programming?

2 A I can't -- I really can't say. I
3 see Outdoor Channel progressing. So I don't
4 know the answer to that.

5 Q Let's talk about Versus for a
6 moment. Am I right, and to help you out I'm
7 looking at page 39 of your report; am I right
8 that only about [REDACTED] in [REDACTED] hours on Versus is
9 event programming?

10 A I'm sorry. What page did you say?

11 Q Page 39, paragraph 66. And it's
12 the third sentence.

13 A Oh, I was looking for a table. I'm
14 sorry.

15 And --

16 Q I'm mixing my --

17 A Yes. There it is. Okay.

18 So Versus' programs, [REDACTED] percent of
19 its air time is event coverage, correct.

20 Q So, I'm sorry. I missed your
21 answer.

22 Versus, [REDACTED] and [REDACTED] hours on

1 Versus are event coverage, right?

2 A Roughly, yes.

3 Q Whereas [REDACTED] on Tennis
4 Channel is event coverage?

5 A Correct.

6 Q Now as I understand your
7 comparison of -- well, strike that. Let me ask
8 a different question.

9 Look at page 38 of your report for
10 me, if you would.

11 A Yes.

12 Q This is again the same day that we
13 were looking at for Golf Channel before. This
14 time it's Versus and it compares the event
15 programming on Versus to the event programming
16 on Tennis Channel, And there's about double
17 the amount of programming from less than seven
18 days on Tennis Channel as there is on versus,
19 correct, in terms of hours?

20 A Again, because the Tennis Channel
21 included all of its repeats making up [REDACTED]
22 percent of its time, your statement is

1 correct.

2 Q I didn't see you do a count of the
3 repeats that Versus does in your testimony.

4 A I -- I did do that. I didn't
5 include it in the report.

6 Q And what did it show?

7 A You want me to tell you what it
8 showed?

9 A Yes.

10 A It showed that Versus repeats [REDACTED]
11 percent of its event hours.

12 Q Okay. So that would drop [REDACTED]
13 off of that [REDACTED] number?

14 A In terms -- if we were trying to
15 get at live, you know first run same day?

16 Q Yes. We'd expect about --

17 A Yes.

18 Q -- [REDACTED] on the Versus?

19 A Yes.

20 Q Okay.

21 A So where you end up is that
22 they're -- they're, again, within shooting

1 distance of each other in terms of live same
2 day hours.

3 Q Okay.

4 A Which really is the dynamic you
5 see in both Golf and Versus. What they're
6 doing is they're airing a lot of -- you know,
7 relatively a lot of live same day stuff and
8 then they're not really repeating it. Tennis
9 airing more hours by repeating what its got.

10 Q But if you look at the total
11 hours, Tennis has more live programming than
12 Versus, right?

13 A That -- it does, yes.

14 Q Much more?

15 A I can't -- it's not in my report,
16 but I did count up the live hours on Versus.
17 And it is somewhere in the neighborhood of [REDACTED]
18 hours a year, or something like that. And we
19 know that Tennis is --

20 Q About [REDACTED]

21 A [REDACTED].

22 So, yes, its got another -- it's about [REDACTED]

1 percent less.

2 Q Okay. Let's go to another factor
3 that you look at. On page 22 paragraph 37 of
4 your report. Let me know when you're with me.

5 A I'm there.

6 Q Page 22 paragraph 37. You talk
7 about the popularity of the sports that are
8 featured on three channels, is that right?

9 A Yes.

10 Q And what you do --

11 A I'm sorry. I'm going to -- I'm
12 actually going to amend what I said.

13 I talk about popularity of Golf
14 and Tennis, not all three here.

15 Q Okay. I thought you had talked
16 about hockey, but maybe I'm mixing myself up.

17 You talk about the popularity of
18 golf and tennis and in doing so, for golf you
19 cite the ratings that golf gets when its on
20 channels other than the Golf Channel, right?

21 A Correct.

22 Q And you cite the ratings that

1 tennis gets when it's channels other than the
2 Tennis Channel?

3 A Correct.

4 Q Did you ever see Comcast make
5 carriage decisions by looking at how golf gets
6 rated on channels other than the Golf Channel
7 in terms of deciding whether it was going to
8 carry Golf Channel?

9 A I didn't ask the question and the
10 analysis and information is not here for that
11 purpose. It's for a different purpose.

12 Q Same answers for Tennis Channel
13 and Versus, I take it?

14 A Correct.

15 Q Okay. Now while you looked at
16 ratings that these sports get when they're not
17 Tennis Channel or Golf Channel, you did not do
18 your own analysis of the ratings for Tennis
19 Channel itself, Golf Channel itself, Versus
20 itself other than your criticism of what Mr.
21 Brooks has to say in that area, right?

22 A I'm better familiar with --

1 generally, with the ratings. They have
 2 national Nielsen ratings for Golf, and for
 3 Versus and for some of their, you know
 4 individual events. I have a knowledge,
 5 working knowledge of them.

6 I would love to be familiar with
 7 Tennis Channel's national ratings, except they
 8 don't have any.

9 Q Okay. But you didn't do a
 10 systematic analysis of the ratings for all
 11 programming on the Golf Channel, did you?

12 A My -- it didn't play a role in my
 13 assignment, so I try not to do things that
 14 don't pertain to my assignment.

15 Q Same answer for Versus; you didn't
 16 do a systematic study of the ratings for all
 17 the programming on Versus?

18 A I didn't do a systematic study of
 19 the ratings on versus because it didn't matter
 20 in the analysis.

21 Q And when you faulted Mr. Brooks'
 22 analysis, you didn't attempt to do an analysis

1 of Tennis Channel's ratings that you thought
2 would be more accurate, did you? You didn't
3 look at individual markets or anything like
4 that?

5 A My assignment was to analyze what
6 Mr. Brooks had done, and so that's what I did.

7 Q So was I correct in what I said
8 that you didn't do your own independent
9 analysis of ratings other than criticizing Mr.
10 Brooks?

11 A Other than analyzing Mr. Brooks,
12 and I would have been thrilled to say this is
13 really great, but I didn't come to that
14 conclusion, so then I ended up criticizing
15 him.

16 Q Nor did you offer an alternative
17 ratings analysis, right?

18 A I did not.

19 Q Okay. When you looked at your
20 table, the map that appears on page 44. Let
21 me know when you're with me.

22 A I'm there.

1 Q As I understand it, and this may
2 be confidential, this is our data and I don't
3 think there's anyone other than our person in
4 the room, so I think it's fine.

5 You looked at ratings in [REDACTED]
6 markets, correct?

7 A Yes.

8 Q Are you aware that Mr. Brooks
9 ultimately looked at data from [REDACTED] markets?

10 A I've seen that.

11 Q And do you know that those [REDACTED]
12 markets represent [REDACTED] percent of the U.S.
13 population?

14 A The markets or the Tennis Channel
15 customers within them?

16 Q The [REDACTED] markets that he looked at
17 for his Tennis Channel, Versus and Golf
18 ratings. Are you aware of the fact that those
19 markets represent [REDACTED] percent of the U.S.
20 population?

21 A I don't remember the number off
22 the top of my head. Clearly, the [REDACTED] percent--

1 the [REDACTED] markets represent a higher percentage
2 of the population then the [REDACTED] markets do.

3 Q You don't dispute that number that
4 there's [REDACTED] percent of --

5 A I just have no opinion on it. I'm
6 going to accept that you're correct.

7 Q Now, you did this overlay where
8 you overlay the markets -- [REDACTED] of the [REDACTED]
9 markets Mr. Brooks looked at not all [REDACTED] but [REDACTED]
10 of those markets. You overlaid them with the
11 areas of Tennis Channel popularity, right?

12 A Correct.

13 Q That's what you did --

14 A No, not Tennis Channel. But
15 tennis--

16 Q Tennis popularity?

17 A -- participation, frequency of
18 tennis participation.

19 Q Got it. And that's what you have
20 in map 2?

21 A Yes.

22 Q Did you do that kind of analysis

1 for hockey participation or golf
2 participation?

3 A Because there was no reason to do
4 it, I did not do that.

5 Q So you don't know, for example, if
6 this analysis also skews in favor of golf?

7 A Again, because there's nor reason
8 to do that, I didn't do it.

9 Q Okay. So you don't know the
10 answer to my question?

11 A I -- I don't know the answer.

12 JUDGE SIPPEL: Are we still in
13 closed session?

14 MR. SCHMIDT: No, we're not. We're
15 not.

16 (END OF CLOSED SESSION)

17

18

19

20

21

22